

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE TRICOR DIRECT PURCHASER
ANTITRUST LITIGATION

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CASE NO. 05-340
(consolidated)

**NOTICE OF TAKING THE VIDEO-TAPED DEPOSITION OF
PROF. RICHARD J. GILBERT**

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure, Plaintiffs, in the above-referenced action will take the video-taped deposition upon oral examination of Prof. Richard J. Gilbert. This deposition will occur as follows:

<u>Date</u>	<u>Time</u>	<u>Place</u>
July 25, 2007	9:00 a.m.	Keker & Van Nest. LLP
July 26, 2007	9:00 a.m.	710 Sansome Street San Francisco, CA 94111

The testimony of the witness will be video-taped and will be recorded and transcribed by a court reporter. The deposition will continue from day to day until completed. All counsel are invited to attend and cross-examine.

PLEASE TAKE FURTHER NOTICE that, under Federal Rules of Civil Procedure 26(a)(2) (B), 26 (b)(1), and 34, defendants are requested and required to produce the documents identified on Exhibit "A" attached hereto.

Respectfully submitted,

By: 

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Dated: July 17, 2007

EXHIBIT A

EXHIBIT "A" TO THE NOTICE OF DEPOSITION OF RICHARD J. GILBERT

The Defendants are required to produce the following documents:

1. All documents, work papers, or other materials, electronic or otherwise, not yet produced to the Direct Purchaser Class Plaintiffs in this litigation that:
 - (a) Dr. Gilbert relies upon or intends to rely upon in connection with his June 29, 2007 report (and any opinions expressed therein); and
 - (b) were prepared by Dr. Gilbert or persons working under his direction in connection with his June 29, 2007 report, and upon which Dr. Gilbert relies or intends to rely in any way for any of his opinions in this case, including, without limitation, those non-public documents, work papers, or other materials cited in Exhibit C to Dr. Gilbert's report;
2. The underlying data and documents relating to all tables and figures in Dr. Gilbert's report.
3. Dr. Gilbert's non-confidential testimony, reports, and/or opinions in the *Brand Name Prescription Drug Antitrust Litigation* and the *Zeneca Limited* litigations cited in Exhibit B to Dr. Gilbert's report.
4. The following materials listed on Dr. Gilbert's CV under the Publications subtitle: "Articles" Nos. 17-18; and "Chapters" Nos. 2 and 6.
5. All documents, notes, comments, records, emails, work papers, drafts, or other materials, stored electronically or otherwise, relating to any of Professor Richard Gilbert's articles that were published or are reasonably expected to be published during the pendency of this litigation, including Dr. Gilbert's article, entitled "Holding Innovation to an Antitrust Standard," published in the Spring of 2007. This request includes, *inter alia*, material: (a) currently in the possession, custody, or control of Defendants, any of Defendants' attorneys, and/or Professor Gilbert; (b) created or reviewed by any of Defendants' attorneys, including outside counsel such as Matthew Hendrickson and Steven Albertson; and, (c) in the form of drafts or notes that Dr. Gilbert sent to, or received from, commentators or other persons (including, e.g., Defendants' counsel) for review and comment.

DEFINITIONS AND INSTRUCTIONS WITH RESPECT TO EXHIBIT "A"

- A. This set of document Requests is hereby served on the defendant (hereinafter referred to as "you" or "the deponent").

B. You must produce all of the described documents called for by these Requests. "Document" means all material within the scope of the applicable Rules of Civil Procedure, including but not limited to:

1. All depositions, communications, letters, telegrams, reports, cablegrams, correspondence, memoranda, records, reports, notes, drafts, data, data compilations, spreadsheets, charts, calculations, proposals, minutes, affidavits, books, papers, magazines, newspaper articles, logs, calendars, diaries, journals, lists, brochures, pamphlets, literature, advertising, computations, tabulations, computer printouts, computer files, computer drives, home computer contents, personal computer contents, floppy disks, zip disks, databases, database entries, database queries, database query results, word processing files, spreadsheet program files, bills, statements, invoices, vouchers, bills of lading, schedules, purchase orders, change orders, work orders, contracts, agreements, books of original entry, accounts, checks, tape recordings, photostats, motion pictures, slides, photographs, sketches, drawings, charts, graphs, video recordings, writings, electronic transmissions, e-mail transmissions, images, interoffice communications, satellite network communications, manuals, brochures, computerized memorializations, network communications and transmissions, VSAT network communications, VPN communications and transmissions, transcripts and other similar objects, or any other written, printed, recorded, electronic, electric, magnetic, digital, or video matter or tangible thing on which any words, numbers, or phrases are affixed or conveyed;
2. All depositions and documents, including pleadings, Interrogatory answers, responses to requests for production, responses to requests for admission, and any other document containing statements, admissions, or other matter prepared by or on behalf of you, your party-opponent(s), or codefendants, from any and all other lawsuits or other legal proceedings.
3. Copies of such documents upon which appear any initialing, notation or handwriting of any kind not appearing on the original;
4. Such documents, whether they are prepared by you or your agents, employees, consultants, representatives or attorneys, for their own use, or for transmittal in any manner, or were received by any means by you and prepared by another; and
5. Such documents, wherever located, whether in the files of any agent, employee, consultant, contractor, representative, or attorney of yours, or in any file in the possession, custody or control of you.

C. In producing the requested documents, you must include all documents or writings of which you have knowledge:

1. whether created by you, sent by you, sent to you, received by you, in your possession
2. whether created by, sent by, sent to, received by, or in the possession of any other person, firm, corporation or other entity
3. whether a previous version, edition, revision or draft; a subsequent version, edition, revision or draft; a superseded version, edition, revision or draft; or an obsolete version, edition, revision or draft
4. that constitute the sought document or writing, or which refer to, relate to, pertain to, or reflect the sought document or writing.

The foregoing is hereby incorporated into each applicable Request in this set as though set forth fully at length as a subpart thereof.

D. Whenever you choose to withhold from production any document called for by these Requests, you must provide a log containing the following information:

1. The title of the document or writing;
2. The number of pages of the document or writing;
3. The identity of all author(s) or drafters of the document or writing;
4. The identity of each person to whom an original or a copy of the document or writing was sent;
5. The subject matter of the document or writing;
6. The subject matter and a description of the material withheld, to the fullest extent possible short of waiving the claim to privilege; and
7. The reason for withholding the document or writing.
8. The identity of each person, firm, corporation or other entity in possession of an original or copy of the document or writing;
9. The identity of each person, firm, corporation or other entity in last known possession of an original or copy of the document or writing;
10. The date the document or writing was created;
11. The version, revision or edition of the document or writing;

12. Whether the document or writing is a draft copy or final version;
13. The identity of all other versions, editions, revisions or drafts of the document or writing (even if superseded or obsolete), together with the creation dates and effective dates of all other versions, editions, revisions or drafts.

The foregoing is hereby incorporated into each applicable Request in this set as though set forth fully at length as a subpart thereof.

- E. You have the duty to seasonably supplement your responses into the future.
- F. The singular form of a word shall refer to the plural as well and words used in the masculine gender shall also include the feminine.
- G. "And" and "or" shall be construed either conjunctively or disjunctively as required by the context of the Request to bring within the scope of the Request any document or writing or information that might be deemed outside its scope by another construction.

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2007, I electronically filed the foregoing document using CM/ECF, which will send notification of such filing to all registered participants, including:

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I hereby certify that on July 17, 2007, I sent by electronic mail the foregoing document
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